



Appeal Decision

Site visit made on 10 December 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Appeal Ref: APP/D3125/W/19/3237054

Kelmscott Manor, Lechlade, Kelmscott GL7 3HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Lewis of the Society of Antiquaries of London against the decision of West Oxfordshire District Council.
 - The application Ref 19/00493/S73, dated 18 February 2019, was refused by notice dated 21 May 2019.
 - The application sought planning permission for 'Internal and external alterations to allow repair to buildings. Erection of new learning building and construction of car park' without complying with a condition attached to planning permission Ref 18/01509/FUL, dated 6 November 2018.
 - The condition in dispute is No 6 which states that:
'Prior to the first use of the extended car park, full details (including a management plan) of a procedure which only permits the purchase (or validation in the case of tickets purchased online) of tickets to gain entry to Kelmscott Manor and its grounds within the car park hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall include improved signage proposals to help to deter vehicular access through the village by visitors to Kelmscott Manor. Once approved the approved management plan and procedure shall be adhered to at all times that the Manor is open to the public thereafter.'
 - The reason given for the condition is: *'In the interests of public safety and to ensure that the primary point of contact for visitors to Kelmscott Manor is via the car park.'*
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Decision

1. The appeal is allowed and planning permission is granted for 'Internal and external alterations to allow repair to buildings. Erection of new learning building and construction of car park' at Kelmscott Manor, Lechlade, Kelmscott GL7 3HJ in accordance with the application Ref 19/00493/S73 dated 18 February 2019 without compliance with condition number 6 previously imposed on planning permission Ref 18/01509/FUL dated 6 November 2018 and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr John Lewis of the Society of Antiquaries of London against West Oxfordshire District Council. This application is the subject of a separate Decision.

Procedural matters

3. In my heading above, in order to assist clarity and consistency, notwithstanding the reference to internal alterations which would not normally require planning permission, I have used the description of development on the decision notice reference 18/01509/FUL (the original permission).
4. The application relates to the removal or variation of a condition following grant of planning permission and proposed a varied wording. This is a separate process to an application to discharge the requirements of condition 6 on the original permission. However, the appellant refers to the variation and discharge of condition 6 in the appeal form and the documents accompanying the application included a management plan¹. Planning Practice Guidance (PPG) states that an applicant may, where it is feasible to do so, seek approval at the application stage for matters which may otherwise have been the subject of conditions. I shall therefore take account of the management plan insofar as is relevant to the application to remove or vary condition 6.

Background and Main Issues

5. The original planning permission permitted a series of alterations and developments at Kelmscott Manor (the Manor), a Grade I listed building that is open to visitors. The main car park for visitors is provided some distance from the Manor itself near to St George's Church. However, staff, volunteers and some visitors park within the grounds of the Manor and coaches use South Lane. The original permission included provisions to extend the existing main car park in order to provide for approximately 25 more car parking spaces and 3 coach spaces. The approved plan² shows the access and surfacing arrangements.
6. The planning committee report³ made it clear that the proposals would facilitate increased opening times for the Manor such that during April to October it would be open to the public on Thursdays to Saturdays with pre-booked groups on Wednesdays. Additionally, educational visits and schools and community use would operate on specified days and times. Amongst other matters, the proposal sought to align the opening of the car park with those intended times.
7. The minutes of the Lowlands Area Planning Sub-Committee for the meeting on 13 August 2018 indicate that there was considerable discussion regarding the merits of the original planning application, including the location and operation of the car park. They resolved to permit the scheme subject to such conditions as the Head of Planning and Strategic Planning considered appropriate following consultation with the Chairman of the sub-committee but listed several areas for conditions including restrictions on the use of the car park and the operation of a car parking management plan.
8. The decision notice dated 6 November 2018 imposed condition 6 which required a management plan for the car park to be submitted and agreed. It further specified that this should include a procedure restricting the purchase or validation of tickets to enter the Manor, within the car park. The reason

¹ Kelmscott Manor Management Plan Carter Jonas, February 2019

² Proposed Car Park Drawing number 987.901C, Appendix 2c LPA's Statement

³ Paragraph 5.21 Committee Report reference 18/01509/F dated 13 August 2018, Appendix 2f LPA's Statement

refers to public safety and a requirement that the car park should be the primary point of contact for visitors.

9. The appellant subsequently applied to vary the wording of condition 6 to retain the requirement for a management plan but removing the requirement to purchase tickets at the car park. In addition, a management plan prepared by Carter Jonas dated February 2019 accompanied the application. The Council refused to vary the wording of condition 6 stating that the measures were not sufficient to protect the residential amenities of existing residents and the visual appearance of the conservation area.
10. In light of the background, the main issues are what effect varying condition 6 would have, having regard to (i) public safety, (ii) the living conditions of nearby residents and (iii) whether or not the proposal preserves or enhances the character or appearance of the Kelmscott Conservation Area.

Reasons

11. Section 73(2) of the Town and Country Planning Act 1990 stipulates that the local planning authority, and therefore by extension, an Inspector, shall consider only the question of the conditions subject to which planning permission should be granted. Therefore, the decision before me is not a complete re-consideration of the original planning permission which, in any event, remains intact. As such, my consideration does not consider the merits of the approved access to the extended car park and it therefore follows that the scope of my determination does not extend to the consideration of suggested alternative access arrangements to the car park referred to in some of the representations.
12. Paragraph 55 of the National Planning Policy Framework (the Framework) advises that planning conditions should be kept to a minimum and only imposed, where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Therefore, it is appropriate to assess condition 6 against these tests, all of which should be met.

Public Safety

13. The original planning permission set out a series of proposals that formed part of an overall strategy to improve public access to the Manor, which included the extension and increased use of the main visitor car park. The committee report accepted that, although the days of opening would increase, there would be no consequent increase in traffic movements on a daily basis⁴. Neither party has provided significant substantive evidence in relation to the quantity of visitor numbers that might result from the stated additional opening times. However, although there is general reference to planning restrictions limiting the existing car park to 3 days a week⁵, I have nothing before me that suggests that the Manor itself would be prevented from increasing public opening times irrespective of the appeal proposal.
14. The appellant indicates that the extension to the car park is sought to primarily cater for the displaced staff, volunteer and visitor parking from the grounds of the Manor, as well as provide suitable coach parking.

⁴ Paragraph 5.25, Committee Report reference 18/01509/F dated 13 August 2018, Appendix 2f LPA's Statement

⁵ Paragraph 5.5, Committee Report reference 18/01509/F dated 13 August 2018, Appendix 2f LPA's Statement

15. The Highway Authority raised no objection to the capacity of the proposed car park, nor its distance from the Manor as part of the determination of the original permission, and there is little evidence before me to demonstrate why, on the grounds of public safety, it should be made mandatory that the only location for the purchase of tickets must be within the car park itself. Furthermore, the documents accompanying the original permission indicated that the South Road Barn would provide a visitor reception with new ticketing facilities⁶. By contrast, there are no suitable facilities provided for the purchase of tickets as part of the works to the car park.
16. Moreover, requiring visitors who do not arrive by car or coach, to divert to the car park in order to purchase a ticket would be illogical as it would conflict with efforts to encourage visitors using alternative modes of transport other than the car or coach. Rather than assisting public safety, to require such visitors to make an otherwise unnecessary journey to enter a car park would run counter to such an objective.
17. Nevertheless, I accept that, in the interests of clarity and certainty, it is necessary and reasonable to align the use of the car park to the circumstances of use set out in the original application and a management plan would be an appropriate mechanism to achieve this. I have had regard to the concerns of the Council and residents regarding the level of detail in the submitted management plan. However, many of the concerns are predicated on the supposition that it is necessary to establish a procedure that would compel visitors to visit the car park prior to entering the Manor and I have found otherwise.
18. However, I do have some concerns in relation to the level of detail in the submitted management plan. For example, whilst it specifies the days and times of the year that the Manor will be open, it makes no reference to the opening hours and therefore, lacks certainty. Furthermore, the provisions for the transfer by vehicle, of disabled visitors and other visitors who may be unwilling to walk, lack detail as to the nature of the route, shelter, capacity and timings. Given that the proposal seeks to largely displace the existing parking nearer to the Manor for such visitors, it is appropriate to ensure the alternative arrangements will adequately fulfil this purpose. Additionally, the management plan does not make clear provision for any mechanisms for review or update should circumstances change over time.
19. Accordingly, the wording of condition 6 introduces a specific onerous mandatory requirement limiting the purchase of tickets which would run counter to the approved details and is not fully justified or proportionate to the relatively minor extension to an existing car park. It follows that condition 6 as currently worded is neither necessary nor reasonable, contrary to the tests in the Framework. However, a variation to the wording to require a management plan omitting reference to the purchase of tickets would overcome these deficiencies.

Living conditions of nearby residents

20. It is reasonably clear from the minutes⁷ that the Council and residents had concerns regarding disruption and annoyance resulting from indiscriminate

⁶ Page 53 Design, Access and Historical Statement

⁷ Lowlands Area Planning Sub-Committee for the meeting on 13 August 2018

parking on the highway within the village. Nevertheless, it was acknowledged that this was an existing issue and not necessarily entirely as a result of visitors to the Manor. Many of the representations received from local residents, to which I have had regard, attest to concerns arising from existing on street parking. This is reinforced, to an extent, by the findings of the parking accumulation survey of the existing car park, the parking stress survey in the village and the visitor interview survey carried out⁸ which indicated that the majority of visitors to the Manor used the off-street parking arrangements provided. I accept that the survey was of a limited duration but equally, there is limited substantive evidence to undermine its findings and therefore, it is of moderate weight.

21. The evidence suggests that, to a considerable extent this is an existing issue that extends beyond the limited impact of the development. As such, it is not clearly shown that unacceptable harm to the living conditions of nearby residents would result as a consequence of the development before me for the following reasons. Firstly, the extension to the car park largely seeks to cater for displaced parking at the Manor, predominantly comprising of staff and volunteers, who would be instructed to use the main car park. There is little before me to suggest that the capacity of the extended car park would be inadequate for this displaced parking. Secondly, it makes specific provision for coaches that would be likely to be associated with pre-booked groups, thereby allowing opportunities for parking arrangements to be confirmed in advance.
22. Thirdly, whilst I accept that the funding arrangements for the consented repairs may be contingent on increasing public access to a heritage asset, it is not shown that, other than the use of the existing car park, there are planning restrictions limiting times of public access to the Manor for which consent was specifically required. Fourthly, the submitted management plan includes proposed improvements to highway signage, that seek to reduce traffic movements through the central part of the village and direct drivers towards the main car park.
23. When taken in combination, I consider that these factors would mean that the development would have a limited impact on the level of on street parking in comparison to the existing situation. On that basis, I do not consider that the evidence demonstrates that the development would exacerbate the existing situation relating to highway parking in the village to such a degree that there would be unacceptable impact upon the living conditions of nearby residents.
24. The specific requirement relating to ticketing in condition 6 primarily seeks to address an existing concern and would therefore, be disproportionate to the nature of the impact arising from the development. Consequently, it would be unreasonable. It is understandable that the Council may generally wish to explore ways to prevent drivers parking on highway verges thereby reducing inconvenience to existing residents. However, this does not justify dispensing with the rigorous application of the tests which planning conditions must meet to accord with the Framework and PPG. There is nothing to prevent the Council from exploring other more appropriate avenues or mechanisms in order to resolve general concerns relating to on street parking in the village.
25. Accordingly, based on the information presented, I find that it is not shown why it would be necessary, having regard to the effect on the living conditions

⁸ Appellant's Highway Appeal Statement prepared by Transport Planning Associates September 2019

of existing residents, for tickets to be purchased in the car park, in order to make the development acceptable in planning terms. The Council refers to policy H6 of the West Oxfordshire Local Plan 2031, September 2018 (LP) in the refusal reason on the decision notice. This policy sets out principles applicable to development that results in changes to existing housing and therefore, is not directly relevant to the circumstances of the appeal proposal. Hence, I do not find that a variation to the wording of condition 6 as proposed would conflict with the principles of policy H6.

Kelmscott Conservation Area (CA)

26. The CA covers the buildings of the village and some of the surrounding rural area, and its significance lies in part in the way the many vernacular buildings and spaces it contains reflect the evolution and growth of the settlement over many years. There is a consistency in the high quality aesthetic appearance of the built form within the village, many of which are listed buildings. Principal amongst them is Kelmscott Manor itself, a Grade I listed building which together with the 6 other listed buildings in the Manor complex make a significant contribution to the character and appearance of the CA. Their significance is derived not only due to the quality of the historic fabric but also due to the strong cultural associations with William Morris and Dante Gabriel Rossetti.
27. Policy EH10 of the LP permits development in a conservation area or affecting the setting of a conservation area where it can be shown to conserve or enhance the special interest, character, appearance and setting of the conservation area and amongst other matters, that the wider social and environmental effects generated by the development are compatible with the existing character and appearance of the conservation area.
28. The car park that is the subject of condition 6 is situated adjacent to, but outside of the CA. However, I am mindful of the statutory duty in section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
29. The Council, having approved the physical alterations under the original planning permission, do not suggest that the extension and alterations to the main car park would fail to preserve or enhance the character or appearance of the CA⁹ and I have nothing before me to justify taking a different view. Aside from the additional directional signage, which the Council consider to be acceptable¹⁰, the management plan does not propose physical alterations and so in this respect is likely to have a neutral impact upon the visual appearance of the CA.
30. Moreover, the proposal to extend the car park would provide for displaced car and coach parking that previously took place within the grounds of, or near to the listed Manor buildings and within the CA. There is no dispute between the parties that the removal of these vehicles to the main car park would be beneficial to the setting of those listed buildings and their contribution to the character and appearance of the CA.

⁹ Paragraph 5.22 Committee report reference 18/01509/F dated 13 August 2018, Appendix 2f LPA's Statement

¹⁰ Paragraph 5.9 Committee report reference 19/00493/s73 dated 20 May 2019

31. The Council and local residents raise concerns that the development would result in an increase in parking on the highway that would be harmful to the character and appearance of the CA. However, for similar reasons to those already mentioned above, it is not shown that the appeal proposal would exacerbate the existing situation relating to highway parking in the village.
32. Therefore, the evidence indicates that overall, the proposal would enhance the character and appearance of the CA when considered as a whole. Accordingly, it is not shown that condition 6 is necessary in order to preserve or enhance the character or appearance of the CA. Therefore, it is not required in order to avoid conflict with policy EH10 of the LP which seeks to safeguard the significance of conservation areas.

Other matters

33. The main car park is situated near to the Grade II* St George's Church. I have a statutory duty¹¹ to give special attention to the desirability of protecting the setting of listed buildings. However, neither party suggests that the proposal would adversely affect the significance of this heritage asset. The original permission permitted the necessary physical works to the car park and as such the proposed variation and contents of the management plan would have a neutral impact. Accordingly, I have nothing before me to lead me to find that the proposal would fail to preserve the setting of the listed building.

Conditions

34. The guidance in the PPG makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
35. As I have little information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have however adjusted the wording of condition 1 to ensure that the time period for commencement originally allowed under the original permission remains the same. In addition, I have omitted condition 3 as it did not list any plans and, in any event, appears to duplicate the requirements of condition 2, the wording of which I have adjusted to expressly refer to the plans accompanying the original planning permission.
36. There were three pre-commencement conditions within the 16 conditions on the original permission. The PPG confirms that the threshold to justify pre-commencement conditions is high and therefore, they should only be used where there is a clear justification. I observed at my site visit that development had commenced. The appellant has confirmed that management plans for a Construction Environmental Management Plan (CEMP) and construction phase traffic management plan have been agreed in writing with the Council under conditions 9 and 16 of planning consent 18/01509/FUL. Therefore, I have adjusted the wording of these conditions to adhere to the details so agreed. On that basis, there is no need for them to be pre-commencement conditions.

¹¹ Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990

37. However, I have nothing before me to show why details of the landscaping scheme must be agreed prior to any development taking place so long as the scheme is agreed and carried out by the end of the first planting season following first occupation of the development, I have amended the wording of this condition accordingly.

Conclusion

38. The PPG indicates that a condition that fails to meet one of the 6 tests in the Framework should not be used. This applies even if the applicant suggests or agrees to it, or it is suggested by the members of a planning committee or a third party. It will be seen from my reasoning that I have found condition 6 fails to meet the tests of necessity and reasonableness. Nevertheless, in the interests of clarity and certainty, it is necessary and reasonable to align the use of the car park to the circumstances of use set out in the original application.
39. The appellants suggested a variation to condition 6 to omit the requirement to purchase or validate tickets within the car park that retained the requirement to agree a management plan. As I have some concerns with the submitted management plan, I am satisfied that the proposed variation to the wording of the condition would meet the 6 tests for conditions in the Framework.
40. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting it with a varied wording and restating those undisputed conditions that are still subsisting and capable of taking effect.

Helen O'Connor

Inspector

Schedule of conditions

1. The development hereby permitted shall be begun before 6 November 2021.
2. The development shall be carried out in accordance with the plans accompanying the application reference 18/01509/FUL as modified by the revised plans deposited on 24 July 2018.
3. Before above ground building work commences, a schedule of all materials (including samples and sample panels of the walling materials) to be used in the elevations of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in the approved materials.
4. The roof of the new learning building (where shown on the approved plans) shall be covered with thatch. The type and method of thatching to be used shall be first submitted to and approved in writing by the Local Planning Authority before any roofing commences.
5. Prior to the first use of the extended car park, a management plan shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall include improved signage proposals to help to deter vehicular access through the village by visitors to Kelmscott Manor. The approved management plan shall be adhered to at all times that the Manor is open to the public thereafter.
6. No works to any of the buildings that are used by roosting bats shall take place until copies of the relevant European Protected Species licence obtained from Natural England and the associated method statement and proposals for post-development monitoring, have been submitted to the Local Planning Authority. The results of the post-development monitoring shall also be submitted to the local planning authority with details of required remedial measures to be implemented and the timescale within which these will be delivered.
7. The development shall be completed in accordance with the recommendations in Sections 3 and 4 of the Updated Preliminary Ecological Appraisal report dated 19th July 2018 prepared by Worcestershire Wildlife Consultancy and drawing numbers:
 - 241D - Proposed Stable Barn and Dovecot First floor, Roof and Structure
 - 242E - Proposed Stable Barn and Dovecot Side Elevations
 - 243 D - Proposed Stable Barn and Dovecot End Elevations
 - 244C - Proposed Stable Barn and Dovecot Long Sections
 - 251B - Proposed Granary and Byre Structure and Roof Plan
 - 252B - Proposed Granary and Byre Elevations
 - 253C - Proposed Granary and Byre Long Sections
 - 254B - Proposed Granary and Byre Cross Sections

- 263D - Proposed North Barn Sections
- 271C - Proposed Field Barn Elevations and Sections.

All the recommendations and drawings shall be implemented in full according to the specified timescales, as modified by a relevant European Protected Species Licence, unless otherwise agreed in writing by the local planning authority, and thereafter permanently retained and maintained.

8. The development shall take place in accordance with the Construction Environmental Management Plan (CEMP) – Biodiversity prepared by Worcestershire Wildlife Consultancy dated August 2019 as approved under condition 9 of planning reference 18/01509/FUL (condition discharge reference 19/02520/CND).
9. Before occupation of the new learning centre and extended car park area, a "lighting design strategy for biodiversity" (in particular for brown long-eared bats and other roosting bats) shall be submitted to and approved in writing by the local planning authority. The strategy shall:
 - i. identify those areas/features on site that are particularly sensitive for bats and bat roosts; and
 - ii. show how and where external lighting will be installed (including the type of lighting) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bat species using their territory or having access to any roosts.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

10. The development shall accord with a landscaping scheme previously submitted to and approved in writing by the Local Planning Authority, including full details of all biodiversity enhancements and a 5 year hedgerow maintenance plan. The scheme shall incorporate the planting of native trees to become new standards of appropriate species and at appropriate locations. The entire landscaping scheme shall be completed by the end of the first planting season following the first occupation of the development hereby approved. If within a period of five years from the date of planting of any tree/hedge/shrub that tree/hedge/shrub, or any replacement, is removed, uprooted or destroyed, or dies, or becomes seriously damaged or defective, another tree/hedge/shrub of the same species and size as that originally planted shall be planted in the same location as soon as reasonably possible and no later than the first available planting season, unless otherwise agreed in writing by the local planning authority.
11. A Biodiversity Enhancement and Management Plan (BEMP) shall be submitted to, and approved in writing by, the Local Planning Authority before the new learning centre and extended car park are first brought into use. The content of the BEMP shall include, but not necessarily be limited to, the following information:

- i. Description and evaluation of features to be managed; including location(s) shown on a site map;
- ii. Landscape and ecological trends and constraints on site that might influence management;
- iii. Aims and objectives of management;
- iv. Appropriate management options for achieving aims and objectives;
- v. Prescriptions for management actions;
- vi. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 5-10 year period);
- vii. Details of the body or organisation responsible for implementation of the plan;
- viii. Ongoing monitoring and remedial measures;
- ix. Timeframe for reviewing the plan; and
- x. Details of how the aims and objectives of the LEMP will be communicated to visitors and other users of the site (e.g. staff).

The BEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that the conservation aims and objectives of the BEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented. The BEMP shall be implemented in full in accordance with the approved details.

12. The car parking areas (including where appropriate the marking out of parking spaces) shown on the approved plans shall be constructed before occupation of the development and thereafter retained and used for no other purpose.
13. The means of access between the land and the highway shall be constructed, laid out, surfaced, lit and drained in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority and all ancillary works therein specified shall be undertaken in accordance with the said specification before first use of the extended car park.
14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no additional windows/rooflights or other additions shall be constructed any of the elevations of the new building.
15. The development shall take place in accordance with the construction phase traffic management plan dated 1 August 2019 approved under condition 16 of planning permission reference 18/01509/FUL (condition discharge reference 19/02345/CND).